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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HUI YU,)	
)	No. C 07-2749 EMC
Petitioner,)	
)	
v.)	
)	ANSWER
MICHAEL CHERTOFF, Secretary of the)	
Department of Homeland Security;)	
EMILIO T. GONZALEZ, Director of the U.S.)	
Citizenship and Immigration Services;)	
CHRISTINA POULOS, Director of USCIS)	
California Service Center; and)	
ROBERT S. MUELLER, III, Director of the)	
Federal Bureau of Investigation,)	
)	
Respondents.)	

Respondents hereby submit their answer to Petitioner's Complaint for Writ in the Nature of Mandamus and Declaratory Judgment Under 28 U.S.C. § 1361.

INTRODUCTION

1. Paragraph One consists of Petitioner's conclusions of law for which no answer is necessary; however, to the extent a response is deemed to be required.

2. Respondents admit that the application was filed in October 2004 and it was based upon a family relationship. Respondents deny the remaining allegations in Paragraph Two.

ANSWER
C07-2749 EMC

JURISDICTION and VENUE

3. Paragraph Three consists of Petitioner's allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Respondents deny the allegations in this paragraph.

4. Paragraph Four consists of Petitioner's allegations regarding venue, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Respondents deny the allegations in this paragraph.

PARTIES

5. Respondents admit the allegations in Paragraph Five.

6. Respondents admit the allegations in Paragraph Six.

7. Respondents admit the allegations in Paragraph Seven.

8. Respondents admit the allegations in Paragraph Eight.

9. Respondents admit the allegations in Paragraph Nine.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. Respondents deny the allegations in Paragraph Ten.

FACTUAL ALLEGATIONS

11. Respondents admit the allegations in Paragraph Eleven.

12. Respondents admit the allegations in Paragraph Twelve.

13. Respondents admit the allegations in Paragraph Thirteen with the exception that the fingerprints were taken on December 21, 2004.

14. Respondents admit the allegations in Paragraph Fourteen with the exception that the applicant appeared for an interview on February 17, 2005.

15. Respondents admit the allegations in Paragraph Fifteen.

16. Respondents admit the allegations in Paragraph Sixteen.

17. Respondents admit the allegations in Paragraph Seventeen.

18. Respondents are without sufficient information to admit or deny the allegations in Paragraph Eighteen.

19. Respondents are without sufficient information to admit or deny the allegations in

1 Paragraph Nineteen.

2 20. Respondents are without sufficient information to admit or deny the allegations in
3 Paragraph Twenty. USCIS database indicates the name check was initiated to FBI on December
4 30, 2004.

5 21. Respondents admit the allegations in Paragraph Twenty-One with the exception that
6 USCIS records indicate the call was made on April 20, 2007.

7 22. Respondents are without sufficient information to admit or deny the allegations in
8 Paragraph Twenty-Two.

9 23. Respondents are without sufficient information to admit or deny the allegations in
10 Paragraph Twenty-Three.

11 24. Respondents admit the allegations in Paragraph Twenty-Four with the exception that the
12 letter was written by Petitioner, not the petitioner of the visa petition.

13 25. Respondents admit the allegations in Paragraph Twenty-Five.

14 26. Respondents admit that the case is pending; however, Respondents deny the remaining
15 allegations in Paragraph Twenty-Six.

16 27. Respondents deny the allegations in Paragraph Twenty-Seven.

17 28. Respondents deny the allegations in Paragraph Twenty-Eight.

18 **CAUSES OF ACTION**

19 29. Respondents incorporate their responses to Paragraph One through Twenty-Eight as if set
20 forth fully herein.

21 30. Respondents deny the allegations in Paragraph Thirty.

22 31. Paragraph Thirty-One consists of Petitioner's conclusions of law for which no answer is
23 necessary; however, to the extent a response is deemed to be required.

24 32. Paragraph Thirty-Two consists of Petitioner's conclusions of law for which no answer is
25 necessary; however, to the extent a response is deemed to be required.

26 33. Paragraph Thirty-Three consists of Petitioner's conclusions of law for which no answer is
27 necessary; however, to the extent a response is deemed to be required.

1 **PRAYER FOR RELIEF**

2 The remaining paragraphs under the heading “prayer for relief” consists of Petitioner’s prayer
3 for relief and request for costs, to which no admission or denial is required; to the extent a
4 responsive pleading is deemed to be required, Respondents deny this paragraph.

5 **FIRST AFFIRMATIVE DEFENSE**

6 Petitioner’s complaint fails to state a claim upon which relief may be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(6) because Petitioner
9 cannot establish that Respondents’ duty to act is ministerial, that no other adequate remedy is
10 available, or that Petitioner have a clear right to the relief sought. *See* 28 U.S.C. § 1361.

11 WHEREFORE, Respondents pray for relief as follows:

12 That judgment be entered for Respondents and against Petitioner, dismissing Petitioner’s
13 complaint with prejudice; that Petitioner take nothing; and that the Court grant such further relief
14 as it deems just and proper under the circumstances.

15 Dated: July 30, 2007

Respectfully submitted,

16 SCOTT N. SCHOOLS
17 United States Attorney

18 /s/
19 ILA C. DEISS
20 Assistant United States Attorney
21 Attorneys for Respondents
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